

DIRECTORATE OF TRAINING, EXCISE AND
TAXATION DEPARTMENT,
PUNJAB, PATIALA

GST UPDATE
(June 2023)

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(II) GIST of GST Notifications

Centre's Notification No.	Subject
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Notification No. 15/2023-Central Tax [G.S.R. 449(E)]	CBIC extends Due Date for GSTR-3B Filing in Manipur for April & May 2023
Notification No. 16/2023-Central Tax [G.S.R. 450(E)]	CBIC extends Due Date for GSTR-7 Filing in Manipur for April & May 2023
Notification No. 17/2023-Central Tax [G.S.R. 460(E)]	Extension of Due Date for Filing FORM GSTR-3B for May 2023 in Certain Districts of Gujarat
Notification No. 03/2021-Integrated Tax	Seeks to amend Notification No. 4/2019-Integrated Tax dt. 30.09.2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient.
Notification No. 02/2021-Integrated Tax Dated 1st June, 2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021 .

(III) CENTRE GST NOTIFICATIONS

1. Notification No. No. 14/2023- Central Tax [G.S.R. 448(E)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,

**SUB-SECTION (i)]
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
NOTIFICATION
No. 14/2023- Central Tax**

New Delhi, the 19th June, 2023

G.S.R.(E). — In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, in the fourth proviso: -

(i) for the words, letter and figure “tax period April, 2023” the words, letter and figure “tax periods April 2023 and May 2023” shall be substituted;

(ii) for the words, letters and figure “thirty-first day of May, 2023”, the words, letter and figure “thirtieth day of June, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]

(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 11/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 384(E), dated the 24th May, 2023.

2. Notification No. No. 15/2023- Central Tax [G.S.R. 449(E)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,

SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION

No. 15/2023 – CENTRAL TAX

New Delhi, the 19th June, 2023

G.S.R..... (E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 – Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely:—

(i) for the words, letter and figure “month of April, 2023” the words, letter and figure “months of April, 2023 and May, 2023” shall be substituted;

(ii) for the words, letters and figure “thirty-first day of May, 2023”, the words, letter and figure “thirtieth day of June, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]

(Alok Kumar)

Director

Note: The principal notification No. 12/2023 –Central Tax, dated the 24th May, 2023 was published in the Gazette of India, Extraordinary vide number G.S.R. 385(E), dated the 24th May, 2023.

3. Notification No. No. 16/2023- Central Tax[G.S.R. 450(E)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,

**SUB-SECTION (i)]
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
NOTIFICATION
NO. 16/2023-CENTRAL TAX**

New Delhi, the 19th June, 2023

G.S.R..... (E). –In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely: –

In the said notification, in the first paragraph, in the fifth proviso: -

(i) for the words, letter and figure “month of April, 2023” the words, letter and figure “months of April 2023 and May 2023” shall be substituted;

(ii) for the words, letters and figure “thirty-first day of May, 2023”, the words, letter and figure “thirtieth day of June, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]

(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 13/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 386(E), dated the 24th May, 2023.

4. **Notification No. No. 17/2023- Central Tax [G.S.R. 460(E)**

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,

SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION

No. 17/2023 – CENTRAL TAX

New Delhi, the 27th June, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of May, 2023 till the thirtieth day of June, 2023, for the registered persons whose principal place of business is in the the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat and are required to furnish return under subsection (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of June, 2023.

[F. No. CBIC-20006/16/2023-GST]

(Alok Kumar)

Director

(IV) IGST NOTIFICATIONS

1. Notification No. 03/2021-Integrated Tax

PLACE OF SUPPLY FOR B2B MRO SERVICES IN CASE OF SHIPPING INDUSTRY AMENDED

Seeks to amend Notification No. 4/2019-Integrated Tax dt. 30.09.2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient so as to give effect to the recommended by GST Council in its 43rd meeting held on 28.05.2021 vide Notification No. 03/2021 Integrated Tax Dated 2nd June, 2021.

**MINISTRY OF FINANCE
(Department of Revenue)
New Delhi**

Notification No. 03/2021-Integrated Tax | Dated 2nd June, 2021

G.S.R. 383(E).—In exercise of the powers conferred by sub-section (13) of section 13 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 4/2019-

Integrated Tax, dated the 30th September, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 748 (E), dated the 30th September, 2019, namely:-

In the said notification, in Table A, after serial number (2) and the entries relating thereto, the following serial number and entry shall be inserted, namely: –

(1)	(2)	(3)
"3	Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service."

2. This notification shall come into force with effect from the 2nd day of June, 2021.

[F. No. 354/53/2021]

Note: – The principal [notification No. 04/2019 – Integrated Tax, dated the 30th September, 2019](#) was published in the Gazette of India, Extraordinary, vide number G.S.R. 748 (E), dated the 30th September, 2019 and was last amended by [notification No. 02/2020 – Integrated Tax, dated the 25th March, 2020](#) vide number

G.S.R. 224(E), dated the 25th March, 2020.

2. Notification No. 02/2021–Integrated Tax Dated 1st June, 2021

Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021 vide **Notification No. 02/2021–Integrated Tax Dated 1st June, 2021 to give effect to [Recommendations of 43rd GST Council Meeting](#).**

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
New Delhi

Notification No. 02/2021–Integrated Tax Dated 1st June, 2021

G.S.R. 372(E).—In exercise of the powers conferred by section 20 of the [Integrated Goods and Services Tax Act, 2017](#) (13 of 2017), read with sub-section (1) of section 50 and section 148 of the [Central Goods and Services Tax Act, 2017](#) (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), [No. 6/2017 – Integrated Tax, dated the 28th June, 2017](#), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 698(E), dated the 28th June, 2017, namely: —

In the said notification, in the first paragraph, in the first proviso,-

- (i) for the words, letters and figure “required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax”, the words “liable to pay tax but fail to do so” shall be substituted;
- (ii) in the Table, in column 4, in the heading, for the words “Tax period”, the words “Month/Quarter” shall be substituted;
- (iii) in the Table, for serial number 4, 5, 6 and 7, the following shall be substituted, namely: —

(1)	(2)	(3)	(4)
4.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021 and May, 2021
5.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	March, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 30 days, and 18 per cent thereafter	April, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	May, 2021
6.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	March, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 30 days, and 18 per cent thereafter Copyright © Taxguru.in	April, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	May, 2021
7.	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	Quarter ending March, 2021".

2. This notification shall be deemed to have come into force with effect from the 18th day of May, 2021.

[F. No.

CBIC-20001/5/2021] RAJEEV RANJAN, Under Secy.

Note: The principal notification number 06/2017 – Integrated Tax, dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 698(E), dated the 28th June, 2017 and was last amended *vide* notification number 01/2021 – Integrated Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 311(E), dated the 1st May, 2021.

(V) Advance Ruling

1. AAR West Bengal Rejects Application on GST Registration Requirement in Assam

Case Name: In re Vishnu Engineering Corporation (GST AAR West Bengal)

Appeal Number: Advance Ruling No. 14/WBAAR/2023-24

Date of Judgement/Order : 26/06/2023

Courts: AAR West Bengal (213) Advance Rulings (3243)

In re Vishnu Engineering Corporation (GST AAR West Bengal)

In the case of Vishnu Engineering Corporation, the GST Authority for Advance Ruling (AAR) in West Bengal has rejected the application concerning the requirement of GST registration in the state of Assam. This article provides an analysis of the ruling and its implications.

Analysis: The applicant, engaged in the trading business of electrical motors and related items, had sought clarification on several questions related to GST registration and tax liabilities. However, the AAR determined that the question regarding the requirement of registration in Assam falls outside its jurisdiction, as it is specific to a state other than West Bengal. The AAR further stated that the other questions raised by the applicant did not fall under the purview of the clauses of section 97 of the GST Act. The applicant's arguments focused on the interpretation of relevant provisions and expressed concerns about potential complications if registration were granted in Assam. However, the AAR emphasized its limited authority and jurisdiction, noting that it could only provide rulings within the state of West Bengal.

Conclusion: In the case of Vishnu Engineering Corporation, the AAR West Bengal rejected the application seeking a ruling on the requirement of GST registration in Assam. The AAR clarified its jurisdictional limitations and stated that it could only issue rulings applicable within the state of West Bengal. The ruling highlights the importance of understanding the specific jurisdictional scope when seeking advance rulings related to GST registration and taxation.

2. AAR cannot give ruling on question already decided by jurisdictional authority

Case Name : In re Murshidabad Flour Mill Private Limited (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 12/WBAAR/2023-24
Date of Judgement/Order : 26/06/2023
Courts : AAR West Bangal (213) Advance Rulings (3243)

In re Murshidabad Flour Mill Private Limited (GST AAR West Bengal)

AAR held that Since the question raised had already been decided by the jurisdictional authority in a prior proceeding, the ruling authority concluded that no ruling can be passed in this case, citing the provision in Section 98(2) of the GST Act. AAR is not empowered to give a ruling on a question that has already been decided by a jurisdictional authority. The AAR's jurisdiction is limited to providing rulings on questions that have not been previously addressed. Once a question has been decided by a jurisdictional authority, the AAR is bound by that decision and cannot provide a conflicting ruling.

3. Impact of GST Registration on Multiple Business Types: A Case Study of Aesthetik Engineers Pvt. Ltd.

Case Name : In re Aesthetik Engineers Private Limited (AAR GST West Bengal)
Appeal Number : Advance Ruling No. 10/WBAAR/2023-2
Date of Judgement/Order : 26/06/2023
Courts : AAR West Bangal (213) Advance Rulings (3243)

In re Aesthetik Engineers Private Limited (AAR GST West Bengal)

This analysis seeks to unravel the complexities surrounding the requirements of separate GST registration for each type of business—be it manufacturing, reselling, or providing services—carried out from the same place or at multiple places in the same state. The case in question

revolves around Aesthetik Engineers Private Limited (AAR GST West Bengal) and the GST provisions as they apply to their multifaceted business operations.

Analysis: Aesthetik Engineers Private Limited, a registered entity under the GST Act, is a multifaceted company involved in manufacturing, reselling, and providing services. It aimed to expand its operations to other states, raising questions about GST registration requirements. Key questions focused on the necessity for separate GST registrations for each type of business, each state of operation, and even each contract. These queries fall under clause (f) of sub-section (2) of section 97 of the GST Act. The company referenced various GST Act provisions and rules, suggesting that while separate registrations for different businesses operating from the same location are not mandatory, there's no prohibition either. Additionally, despite being registered under the WBGST Act, 2017, they argued they are not required to register in each state where work is executed. The revenue department did not provide any counter views. The Authority for Advance Ruling (AAR) examined the questions, affirming that while it could address questions related to registration in West Bengal, it couldn't do so for other states. It refrained from making a ruling on the latter.

Conclusion: The case of Aesthetik Engineers Private Limited illustrates the intricacies of GST law as it applies to businesses operating in multiple spheres. As the GST regime continues to evolve, companies must stay aware of changes and implications to ensure compliance.

4. Analysis of GST on Fair Price Shop Dealer's Commission.

Case Name : In re Chanchal Saha (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 09/WBAAR/2023-24
Date of Judgement/Order: 26/06/2023
Courts : AAR West Bengal (213) Advance Rulings (3243)

In re Chanchal Saha (GST AAR West Bengal)

In this article, we will critically analyze the case of Chanchal Saha (GST AAR West Bengal), examining the implications of Goods and Services Tax (GST) on a Fair Price Shop dealer's commission, transport charges, stationary charges, and handling & evaporation losses.

Analysis: The case revolves around determining the applicability of a Nil rate of tax under entry 11A of the Notification No. 12/2017-Central Tax (Rate) for the supplies made by the Fair Price Shop (FPS) to the State Government. This includes the sale of kerosene, sugar, and edible oil under the Public Distribution System (PDS) against a consideration in the form of commission or margin. The main points of contention were whether the applicant could be regarded as an FPS, whether the applicant was supplying services to the State Government, and whether the applicant received consideration in the form of commission or margin. Chanchal Saha, the applicant, is an FPS dealer providing Super Kerosene Oil (S.K. Oil) to ration card holders. The commission received, including dealer's commission, transport charges, stationary charges, and compensation for evaporation losses, was examined for its taxation under GST. Notably, the applicant is working under the provisions of the West Bengal Government's notification and the terms of business and supply to the State Government were thoroughly reviewed.

Conclusion: In conclusion, the GST AAR West Bengal ruled that the applicant does not provide a supply to the State Government. It was established that the applicant was supplying goods, S.K. Oil in this case, to the ration card holders who are liable to pay the consideration, not the State Government. Thus, the Notification No. 12/2017-Central Tax (Rate) was found to be non-applicable in this case, thereby ruling out the possibility of a Nil rate of tax for the supplies in question. This case sets a significant precedent in understanding the application of GST in the context of a Fair Price Shop dealer's commission and related charges.

Held by AAR on Questions Asked:-

Question: Is the applicant, identified as a Fair Price Shop under Notification No. 2565/FS/FS/Sectt/Sup/4M-16/2014 dated 3rd November 2014 by the West Bengal Government, obligated to charge GST from the State Government for the supplies they provide?

Answer: As the applicant isn't supplying any goods or services to the State Government, there is no requirement for them to charge GST to the State Government.

Question: Are elements such as the Dealer's commission, Dealer's Transport Charges, Stationery Charges, and H & E Loss subject to GST or are they considered exempt?

Answer: These specific charges will be subject to GST.

Question: Is the supply of "S.K.Oil", including additional charges, considered a composite supply where the primary supply is the "S.K.Oil"?

Answer: The applicant's supply consists primarily of the goods, "S.K.Oil". The additional charges are considered part of the value of this supply as per clause (c) of sub-section (2) of section 15 of the GST Act.

5. Eligibility for Input Tax Credit in Construction of Warehouse

Case Name : In re Mindrill Systems And Solutions Private Limited (GST AAR West Bengal)

Appeal Number : Advance Ruling No. 08/WBAAR/2023-24

Date of Judgement/Order : 26/06/2023

Courts : AAR West Bangal (213) Advance Rulings (3243)

In re Mindrill Systems And Solutions Private Limited (GST AAR West Bengal)

In the realm of Goods and Services Tax (GST), the eligibility for input tax credit claims, especially in scenarios of warehouse construction, often attracts complexity. This analysis focuses on the GST Advance Ruling in the case of Mindrill Systems And Solutions Private Limited in West Bengal. The case grapples with issues related to the admissibility of credit of input tax, works contract services, and the definition of immovable property.

Analysis At the core of the case, the Authority for Advance Rulings (AAR) examines whether Mindrill Systems, after constructing a warehouse and leasing it to Zomato Hyperpure Private Limited, is eligible to claim input tax credit for the inward supplies used in the construction. The AAR scrutinizes various sections of the GST Act, assessing the complex interplay of multiple provisions and clauses. Mindrill Systems contests that the restrictions pertaining to input tax

credit are not applicable to its case. It argues that since the warehouse isn't for 'own use' but for rent, and it's constructed using detachable pre-engineered steel structures, it doesn't qualify as 'immovable property' and hence, input tax credit should be allowed. However, the AAR refutes these claims, stating that the warehouse is constructed on the applicant's account and cannot be exempted from being considered 'immovable property.' The basis for this conclusion is that the warehouse, despite being made of detachable components, isn't intended to be moved and indeed hasn't been moved post-construction.

Conclusion The AAR's ruling on the Mindrill Systems and Solutions GST case provides vital insights into the complexity of input tax credit eligibility in scenarios involving warehouse construction. The determination of what constitutes 'immovable property' and the interpretation of 'own account' become pivotal in the judgement.

6. No GST is applicable on salary deducted in lieu of notice period

Case Name : In re Tata Autocomp Systems Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2023/23

Date of Judgement/Order : 19/06/2023

Courts : AAR Gujarat (371) Advance Rulings (3243)

In re Tata Autocomp Systems Ltd (GST AAR Gujarat)

Q1a. Whether the deduction of nominal amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would be considered as a 'supply of service' by the applicant under the provisions of section 7 of CGST & GGST ?

A1(a). The deduction of amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

Q1b. In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

A1(b). Since the answer to the above is not in the affirmative, the ruling sought in respect of the question listed at 1(a) is rendered infructuous.

Q1ac. Whether ITC is available to the applicant on GST charged by the CSP for providing the catering services?

A1(c). Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

Q2a. Whether the services by the way of non air conditioner bus transportation facility provided by transport service providers would be construed as 'supply of service' by the applicant to its employees under the provisions of section 7 of CGST and GGST?

A2a. The services by the way of non air conditioned bus transport provided by TSPs would not be construed as 'supply of service by the applicant to its employees under the provisions of section 7 GGST.

Q2b. Whether ITC is available to the applicant on GST charged by the transport service providers for providing the non air conditioned bus transportation services?

A2b. ITC is available to the applicant on GST charged by the TSPs for providing the non air conditioned bus transport services however subject to the condition that the buses hired are more than 13 seater wef 1.2.2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing transportation services to its employees, but disallowing

proportionate credit to the extent embedded in the cost of goods recovered from such employees.

Q3. Whether GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter?

A3. No GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter.

7. StrataTex HSR® classifiable under HSN 59119032 subject to BIS certification

Case Name : In re Strata Geosystems India Pvt Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No .GUJ/GAAR/2023/22

Date of Judgement/Order : 12/06/2023

Courts : AAR Gujarat (371) Advance Rulings (3243)

In re Strata Geosystems India Pvt Ltd (GST AAR Gujarat) Whether the proposed product 'Geotextile-Stratex' would be classifiable under Tariff Item (TI) No. 60059000 or under TI 59119032 of the Customs Tariff Act, 1975? AAR held that based on the information submitted by the applicant, the proposed product StrataTex HSR® would be classifiable under Tariff Item (TI) No. 59119032 of the Customs Tariff Act, 1975 however subject to the condition that they have been granted BIS certification in terms of amendment in Customs Tariff Act, 1975 as per 3rd Schedule (Sr. No. 43(vi)) read with section 98 of Finance Act, 2022.

8. Kandi ravo falls under HSN 24013000 & 28% GST payable: AAR Gujarat

Case Name : In re Devendrakumar Rambhai Patel (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2023/21

Date of Judgement/Order : 12/06/2023

Courts : AAR Gujarat (371) Advance Rulings (3243)

In re Devendrakumar Rambhai Patel (GST AAR Gujarat) The supply of applicant of Kandi ravo' is classifiable under 24013000. The applicant is liable to pay GST at 28% [14 % CGST and 14 % SGST] in terms of notification No. 1/2017-CT(Rate), Sr. No. 13 of Schedule IV subject to the condition that goods are cleared without brand name.

9. GST Implications on Transfer of Monetary Proceeds from IVL India to IVL Sweden

Case Name : In re IVL India Environmental R&D Private Limited (GST AAAR Maharashtra)

Appeal Number : Advance Ruling Order No. Mah/Aaar/Ds-Rm/03/2023-24

Date of Judgement/Order : 05/06/2023

Courts : AAAR (480) AAR Maharashtra (483) Advance Rulings (3243)

In re IVL India Environmental R&D Private Limited (GST AAAR Maharashtra)

AAAR, uphold the MAAR Order No. GST-ARA-50/2020-21/B-108 dated 01.12.2022 vide which it has been held that the transfer of monetary proceeds by the Applicant to IVL Sweden, will be liable for payment of Integrated Goods and Service Tax under reverse charge mechanism under Entry No.1 of Notification 10/ 2017 IGST(Rate) dated June 28. 2017.

The case of IVL India Environmental R&D Pvt Ltd provides critical insights into the GST implications on transferring monetary proceeds to its parent company, IVL Sweden. The Appellant, IVL India, was incorporated under Indian laws by IVL Sweden to execute a project management consultancy (PMC) contract. The proceeds earned by IVL India were further transferred to IVL Sweden. A crucial point of contention arises regarding the GST implications

on this transfer, given the reverse charge mechanism under Entry No.1 of Notification No. 10/2017-I.T. (Rate) dated 28.06.2017

Analysis: Under the PMC contract, IVL India was identified as the consultant, and IVL Sweden as the guarantor. However, despite the work being carried out by IVL India, the crucial support services rendered by IVL Sweden were a significant contributing factor. In essence, without IVL Sweden's expertise and resources, IVL India would not have been able to secure the PMC contract with MCGM. Hence, it was concluded that IVL India availed support services from IVL Sweden. The place of supply of these services was deemed to be India, making it an import of services scenario.

Conclusion: As per Section 13(2) and Section 2(11) of the IGST Act, 2017, the transfer of monetary proceeds from IVL India to IVL Sweden for the support services falls under the ambit of import of services. Given the recipient of services (IVL India) is located in India and the supplier of services (IVL Sweden) is located outside India, the recipient is liable to pay IGST under the reverse charge mechanism in compliance with Notification No. 10/2017-I.T. (Rate) dated 28.06.2017. Therefore, GST is applicable on the transfer of monetary proceeds from IVL India to IVL Sweden.

(VI) JUDGEMENTS

1. Sales tax exemption via certificate from Commissioner of Tourism cannot be rescinded before expiry of eligibility period

Case Name : State of Karnataka Vs Aishwarya Fort (Karnataka High Court)

Appeal Number : S.T.R.P. No. 45 of 2022

Date of Judgement/Order : 09/06/2023

Courts : All High Courts (10838) Karnataka High Court (568)

State of Karnataka Vs Aishwarya Fort (Karnataka High Court)

Karnataka High Court held that exemption certificate from the Commissioner of Tourism, Government of Kerala exempting payment of sales tax is valid for 7 years and could not have been rescinded before the period of eligibility expired as it is sovereign assurance.

Facts- The assessee, a tourism hotel unit is a registered dealer under the Karnataka Value Added Tax Act, 2003. The Government of Karnataka issued a notification dated November 12, 1999 under Section 8-A(1) of the Karnataka Sales Act, 1957 exempting sale of food articles and beverages by new tourism units. Assessee has obtained Exemption Certificate dated March 25th, 2003 from the Commissioner of Tourism, Govt. of Karnataka, Bengaluru. Assessee was earlier registered with the Commercial Tax Department under the provisions of the KST Act and availed tax benefit for F.Ys 2003-04 and 2004-05. Subsequently assessee got registered under the KVAT Act and availed the benefit of exemption of tax for a period of five years during the KVAT regime. The DCCT cum AO issued a proposition notice on the ground that after the enactment of the KVAT Act, the exemption granted under the KST Act would apply only to new industrial units and not tourism units. The AO passed a re-assessment order dated April 30, 2011 denying the exemption on the payment of tax on the sale of food and beverages on the ground that there was no exemption notification issued under the KVAT Act. JCCT(A) partly allowed assessee's appeal and confirmed the denial of exemption from payment under the KVAT Act. KAT allowed assessee's appeal holding that assessee is eligible

for exemption from payment of tax in view of the exemption notification issued under the provisions of KST Act. Aggrieved by the said order, Revenue has preferred this petition.

Conclusion- Held that even in the notification dated 07.01.2000 it is stated that the discontinuation shall not affect the incentives that have been already offered or committed by the Government until the eligibility of such incentives are completed. The eligibility certificate was valid for 7 years and could not have been rescinded before the period of eligibility expired as it is sovereign assurance.

2. Writ not entertained in view of availability of alternative remedy

Case Name : Sajid Rahman Vs Union of India (Gauhati High Court)

Appeal Number : WP(C)/2085/2022

Date of Judgement/Order : 22/06/2023

Courts : All High Courts (10838) Guwahati High Court (97)

Sajid Rahman Vs Union of India (Gauhati High Court) Gauhati High Court held that the existence of an alternative relief would dissuade the Court from entertaining the writ petition. Constitutional Jurisdiction cannot be exercised in view of provisions for alternative remedy.

Facts- Vide the present writ petition under Article 226 of the Constitution of India, the petitioner has assailed the validity of the demand -cum- show-cause notice dated 07.11.2019 as well as the order-in-original dated 28.12.2021, passed by the Principal Commissioner, CGST & Central Excise, Guwahati (respondent no.2). Notably, by the said order dated 28.12.2021, the respondent no.2 had (i) confirmed the service tax demand of Rs.2,95,33,148/- u/s. 73(2) of the Finance Act, 1994, (ii) interest u/s. 75 of the Finance Act, 1994, (iii) penalty of Rs.10,000/- u/s. 77(1) of the Finance Act, 1994, (iv) penalty of Rs.10,000/- u/s. 77(2) of the Finance Act, 1994, and (v) penalty of Rs.2,95,33,148/- u/s. 78 of the Finance Act, 1994.

Conclusion- Hon'ble Supreme Court in the case of The State of Maharashtra & Ors. v. Greatship (India) Ltd., wherein it is held that the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the

entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions. Held that the existence of an alternative relief would dissuade the Court from entertaining the writ petition.

3. GST Exempt: Composite Supply of Atta to State Govt if Goods Value < 25%

Case Name : In re Haldia Agro Private Limited (GST AAR West Bengal)

Appeal Number : Advance Ruling No.13/WBAAR/2022-23

Date of Judgement/Order : 26/06/2023

Courts : AAR West Bangal (213) Advance Rulings (3243)

In re Haldia Agro Private Limited (GST AAR West Bengal)

Q: What is the value of services provided by the applicant for converting wheat into atta/fortified atta, distributed by the State Government through the Public Distribution System, and what is the applicable tax rate?

A: In this case, the value of the supply consists of both monetary and non-monetary consideration, as discussed. The composite supply involves milling food grains into flour (atta) for the Food & Supplies Department of the Government of West Bengal, for distribution under the Public Distribution System. This supply is eligible for exemption under entry serial no. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, as amended, since the value of goods in the supply does not exceed 25% of the total value.

4. GST Exemption for Composite Supply of Milling Wheat into Flour: Analysis & Conclusion

Case Name : In re Baba Lokenath Flour Mills Private Limited (GST AAR West Bengal) Appeal Number : Advance Ruling No.11/WBAAR/2022-23

Date of Judgement/Order : 26/06/2023

Courts : AAR West Bengal Advance Ruling.

In re Baba Lokenath Flour Mills Private Limited (GST AAR West Bengal) This article delves into the GST implications surrounding the composite supply of milling wheat into flour for public distribution. The key issue at hand is whether this supply qualifies for an exemption or is taxable under GST regulations. To determine this, the analysis considers aspects such as the classification of the supply as a composite supply, its relation to functions entrusted to Panchayats or Municipalities, and the value of goods within the supply. Analysis: The analysis begins by examining whether the supply made by Baba Lokenath Flour Mills Private Limited can be regarded as a composite supply of goods and services. It further explores whether the supply is related to functions entrusted to Panchayats or Municipalities as per the Constitution. Additionally, the article evaluates whether the value of the goods in the supply exceeds the 25% threshold of the total value. Based on the agreement between the applicant and the State Government, which involves crushing wheat into wholemeal atta, fortifying it with micro-nutrients, and packing it, it is determined that the activities qualify as a composite supply. The supply of services by way of milling is considered the principal supply. To assess if the composite supply is related to functions entrusted to Panchayats, the relevant guidelines and circulars are examined. The agreement executed between the applicant and the State Government, in accordance with the guidelines, confirms that the supply is indeed in relation to a function entrusted to a Panchayat under the Constitution. The final aspect analyzed is whether the value of the goods in the supply exceeds 25% of the total value. Taking into account the details provided by the applicant, it is found that the value of the goods involved amounts to Rs. 60/- against a total supply value of Rs. 260.48/-. As this value is below the 25% threshold, it satisfies the condition for exemption. Conclusion: Based on the analysis, it is concluded that the composite supply of milling wheat into flour for public distribution

qualifies for an exemption under GST. This determination is made considering the classification as a composite supply, its relation to functions entrusted to Panchayats, and the value of the goods within the supply, which remains below the 25% limit. Businesses involved in such composite supplies are exempted from GST on this particular supply.

5. Bombay High Court allows Refund of IGST with Interest | Sunlight Cable Industries Case

Case Name : Sunlight Cable Industries Vs The Commissioner of Customs NS II And 2 Ors. (Bombay High Court)

Appeal Number : Writ Petition No. 284 of 2021

Date of Judgement/Order : 27/06/2023

Courts : All High Courts (10838) Bombay High Court (1631)

Sunlight Cable Industries Vs The Commissioner of Customs NS II And 2 Ors. (Bombay High Court)

In the case of Sunlight Cable Industries vs. The Commissioner of Customs NS II And 2 Ors., the Hon'ble High Court of Bombay has ruled in favor of the petitioner, allowing the refund of Integrated Goods and Services Tax (IGST) paid on exported goods. The court also directed the refund to be made with interest at a rate of 7%. This article provides an analysis of the court's decision and its implications for the parties involved.

Analysis: The petitioner, an exporter of cables, had inadvertently made errors in filing returns, mentioning incorrect invoice and shipping bill details. However, the petitioner filed a revised return and an amendment order was issued by the customs to correct the error. Despite these corrections, the refund of IGST paid on the exports was denied by the authorities, stating that the petitioner had availed a higher drawback and was therefore ineligible for the refund. The High Court examined the relevant provisions of the IGST Act and CGST Act, particularly Section 54, which provides for refund on zero-rated supplies. It held that the petitioner's case fell within the scope of zero-rated supplies and, therefore, the refund could not be denied. The court also noted that there was no evidence presented by the revenue authorities to establish

that the petitioner had availed a double benefit. In reaching its decision, the High Court relied on earlier judgments, including the Gujarat Nippon Case and the Amit Cotton Case, both of which supported the petitioner's position. These judgments emphasized that when an exporter does not claim a higher duty drawback, they are entitled to the IGST refund.

Conclusion: The Bombay High Court's ruling in the Sunlight Cable Industries case is significant as it upholds the right of exporters to claim a refund of IGST paid on zero-rated supplies. The court's decision highlights the importance of adhering to the relevant provisions of the tax laws and ensuring that errors are promptly corrected. This ruling provides clarity and guidance to exporters facing similar situations and reinforces the principle of granting refunds in cases where a double benefit is not being claimed.

The matter was argued by Ld. Counsel Bharat Raichandani

6. Provisional attachment u/s 83 of CGST ceases to exist after one year

Case Name : Bharat Parihar Vs State of Maharashtra Thr. PP Office And Ors (Bombay High Court)

Appeal Number : Writ Petition No.3742 of 2023

Date of Judgement/Order : 30/06/2023

Courts : All High Courts (10838) Bombay High Court (1631)

Bharat Parihar Vs State of Maharashtra Thr. PP Office And Ors (Bombay High Court)

Bombay High Court held that provisional attachment under section 83 of the Central Goods and Services Tax Act, 2017 ceases to exist after a period of one year.

Facts- This petition challenges provisional attachment of bank account of the Petitioner with Yes Bank, Mumbai, under Section 83 of the CGST Act, 2017 and further communication dated 19th April 2023, whereby the provisional attachment made on 21st April 2022 is retained under Section 83 of the CGST Act. The petition is filed after the objections of the Petitioner to provisional attachment were disposed of under Rule 159(5) of the CGST Rules by the Respondents.

Conclusion- In the case of Guru Nanak Motor House vs. Union of India, this Court, after examining the provisions of Section 83, has taken a similar view wherein it was held that after the expiry of period of one year, the provisional attachment ceases to exist.

We may consider taking action of provisional attachment under Section 83 in respect of this bank account and, thereafter, the Joint Commissioner (Investigation) has opined that this bank account is required to be attached. The said order sheet is dated 21st April 2022 and formed the basis for issue of first provisional attachment on 21st April 2022 and which, as observed above, has ceased to expire by operation of sub-section (2) of Section 83.

7. HC Quashed detention Over Expired E-Way Bill on National Holiday

Case Name : Perfect Enterprise Vs State of West Bengal (Calcutta High Court) Appeal Number : WPA 532 of 2023

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10838) Calcutta High Court (625)

Perfect Enterprise Vs State of West Bengal (Calcutta High Court)

Introduction: In a recent ruling, the Calcutta High Court set aside a detention order against Perfect Enterprise on account of an expired e-way bill, taking into account the national holiday which fell within the validity period of the bill. The court quashed orders from both the Appellate Authority and the Adjudicating Authority.

Analysis: The case revolved around the inability of Perfect Enterprise to revalidate their expired e-way bill due to a national holiday, Eid-ul-Fitr, on May 3, 2022. The court held that this did not amount to wilful misconduct on part of the petitioner. The case sets a crucial precedent in acknowledging unforeseen circumstances, like a national holiday, that might hinder the revalidation of e-way bills. The respondent authorities, represented by Mr. Ghosh, argued that the vehicle was intercepted with an expired e-way bill and the petitioner hadn't taken steps for revalidation. Despite this, the court cited a precedent set in a previous ruling – Hanuman Ganga Hydro Projects Private Limited vs Joint Commissioner, State Tax Authority,

Silliguri Circle and Another, which laid emphasis on the absence of a willful attempt to evade payment of tax.

Conclusion: The Calcutta High Court's ruling is a pivotal development in India's Goods and Services Tax (GST) legislation, particularly around the validity and revalidation of e-way bills. It highlights the importance of bona fide intention in tax compliance and the necessity to account for circumstances beyond the control of the parties involved, such as national holidays. This ruling reaffirms the judicial stance towards a more considerate and circumstantial understanding of tax compliance norms and penalties.

8. Bombay High Court Quashes Arbitrary Cancellation of GST Registration

Case Name : Mayel Steels Pvt Ltd Vs Union of India (Bombay High Court)

Appeal Number : WP (L) No. 36594 of 2022

Date of Judgement/Order : 19/06/2023

Courts : All High Courts (10838) Bombay High Court (1631)

Mayel Steels Pvt Ltd Vs Union of India (Bombay High Court)

In the case of Mayel Steels Pvt Ltd vs Union of India, the Bombay High Court delivered a judgment quashing the cancellation of the petitioner's registration. The court found that the respondent had acted arbitrarily and emphasized the importance of serving proper notice to dealers.

Analysis: The court observed that the respondent, Superintendent of CGST & C EX, had acted in an arbitrary manner by issuing a show cause notice to the petitioner with a remarkably short notice period and a peculiar time for appearance. The court questioned the validity of such a notice and emphasized the principles of natural justice, stating that the petitioner should have been granted an opportunity to be heard before adverse consequences were imposed. Furthermore, the court noted that despite the filing of the present petition, the respondent proceeded to cancel the petitioner's registration, even including issues not mentioned in the show cause notice. This reaffirmed the court's view that the respondent had

acted arbitrarily and in breach of the principles of natural justice. As a result, the court set aside both the show cause notice and the order cancelling the petitioner's registration. The court also directed that if a fresh show cause notice is to be issued, the petitioner should be given an opportunity to reply in accordance with the law. Additionally, the court emphasized the need for effective communication of show cause notices, suggesting that they should be served not only through online portals but also via email and hand delivery to ensure dealers can effectively respond.

Conclusion: The judgment of the Bombay High Court in the case of Mayel Steels Pvt Ltd vs Union of India highlights the importance of adhering to principles of natural justice and avoiding arbitrary actions. The court's decision to quash the cancellation of registration emphasizes the need for fair procedures and proper notice to be served to dealers. This judgment serves as a reminder of the significance of procedural fairness and the consequences of arbitrary administrative actions.

The matter was argued by Ld. Counsel Bharat Raichandani

9. Life tax to be collected on the net invoice price of the vehicle and not ex-showroom price: AP HC

Case Name : Talasila Sowjanya Vs State of Andhra Pradesh (Andhra Pradesh High Court)

Appeal Number : W P No.12089 of 2019

Date of Judgement/Order : 13/06/2023

Courts : All High Courts (10838) Andhra Pradesh HC (176)

Talasila Sowjanya Vs State of Andhra Pradesh (Andhra Pradesh High Court) Conclusion: The Andhra Pradesh High Court has held that life tax is to be collected from the vehicle owner upon sale based on the net invoice price of the vehicle and not the ex-showroom price of the vehicle. The life tax can be levied only on the cost of the vehicle under the 6th schedule of the A.P. Motor Vehicles Taxation Act.

Facts: In present facts of the case, the Petitioner filed the writ petitions in the nature of Mandamus declaring the action of the Respondents in demanding Tax 14 percent on the net

invoice price of INR 11,10,500/- instead of on the cost of the motor vehicle of INR 8,60,853/- contrary to Section 3 Proviso Four of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 R/w Schedule Six and Andhra Pradesh Motor Vehicles Taxation Rules 1963 as illegal, arbitrary, without jurisdiction and violative of Articles 14, 19, 265 and 300-A of the Constitution of India and consequently to direct the Respondents to forthwith refund the excess Tax of INR 52,168/-. At the time of purchase, the petitioner on demand paid INR 1,20,519 /- towards 14% CGST and INR 1,20,519.38/- towards 14% SGST. The petitioner paid INR 8,608/- towards Compensation Cess. The petitioner was forced to pay INR 1,55,470/- @ 14% towards Tax allegedly levied under Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 R/w Schedule –VI and Andhra Pradesh Motor Vehicles Taxation Rules, 1963 on the price shown in the invoice dated 12.06.2019, which is inclusive of Central GST, State GST & Cess for the reasons best known to the respondents without there being any power much less authority is collecting tax on the basis of “net invoice price” which is inclusive of CGST, SGST & Compensation Cess as well. The motor vehicle purchased by the petitioner falls under fourth proviso to Section 3(2) of the Act and the Tax leviable under Schedule VI of the Act is 12% on the cost of the Motor Vehicle which is INR 8,60,853/- as the Unladen weight is 1168 kgs. The respondent submitted that the cost of the vehicle is the actual consideration paid by the petitioner on purchase of the motor vehicle from the dealer. This consideration includes Central GST, State and cess also which comprises the total amount paid by the purchaser. As such, the cost of the vehicle cannot be seen as excluding some part of the amount (consideration) paid by the purchaser. Hence, life tax is to be collected on the total invoice cost of the vehicle. The Petitioner places its reliance upon the judgment in the case of Fathima Shirin Vs. Joint Regional Transport Officer, (2013) 3 KLT 945. The Hon’ble High Court observed that the case of Fathima Shirin Vs. Joint Regional Transport Officer has been reaffirmed in Nagendra Mani. N. Vs. State of Kerala reported in 2015 SCC OnLine Ker 2117:(2015) 3 KLT (SN 160) 126. Also, in N. Hemendranath Reddy Vs. State of Telangana, the Court observed that life tax to be collected from a vehicle owner produced for registration upon the sale based on the net invoice price of the vehicle and not upon the ex-showroom price of the vehicle. Thereby, the Court upheld that life tax can be levied only on the “cost of the vehicle” under Sixth

Schedule to the A.P. Motor Vehicles Taxation Act, 1963, unless the contrary is carved out by way of notification in that behalf. In the absence of any notification in that behalf, life tax can be levied only on the „cost of the vehicle“. The learned counsel for the petitioners also relied upon a judgment reported in the High Court of Telangana between Kishore Rai Sohni Vs. The State of Telangana, wherein, under similar circumstances, the Court has held as follows: “Accordingly, the Writ Petition is allowed and respondents are directed to refund a sum of Rs.51,000/- collected from the petitioner towards life tax in excess of the life tax payable by the petitioner under the Sixth Schedule to the Act on the invoice sale price, to the petitioner within four (04) weeks from today. No costs.” On basis of the above, it was held that the life tax is to be collected from the vehicle owner upon the sale based on the net invoice price of the vehicle and not upon the ex-showroom price of the vehicle. The life tax can be levied only on the cost of the vehicle under the 6th schedule of the A.P. Motor Vehicles Taxation Act. Accordingly, the writ petitions were allowed and the respondents were directed to refund a sum of Rs.52, 168/- to the petitioner which were collected in excess of the life tax payable by both the petitioners under the Sixth Schedule to the Act on the invoice sale price.

10. Cash Credit Account Not Provisionally Attachable under GST: Calcutta HC

Case Name : J.L. Enterprises Vs Assistant Commissioner State Tax (High Court Calcutta)

Appeal Number : MAT 1001 of 2023

Date of Judgement/Order : 16/06/2023

Courts : All High Courts (10838) Calcutta High Court (625)

J.L. Enterprises Vs Assistant Commissioner State Tax (High Court Calcutta) In a significant judgement, the Calcutta High Court has held that cash credit accounts cannot be provisionally attached under the Goods and Services Tax (GST) regime. The case of J.L. Enterprises Vs Assistant Commissioner State Tax dealt with the critical question of whether an order of provisional attachment could be made to a cash credit account, providing clarification on the issue.

Analysis: The court highlighted the importance of interpreting the rules of the Central Goods and Services Tax Act 2017 correctly. The ruling stressed that the power conferred under Section 83 of the Act should be used sparingly and with extreme care, further emphasizing the necessity of avoiding detrimental impact on businesses. This decision aligns with other judgments, stressing the significance of protecting businesses while also safeguarding the interests of the revenue. Additionally, the court stated that the provisional attachment should not equate to attachment during recovery proceedings, suggesting that such a move should be a last resort.

Conclusion: This verdict by the Calcutta High Court brings significant relief to businesses and has the potential to influence the handling of similar cases in the future. It's a clear sign that the courts are committed to ensuring the protection of business interests while balancing the need to secure tax revenues. However, this decision does not prevent the tax department from initiating other proceedings as per law, suggesting that businesses must remain compliant with GST regulations.

11. Motor Vehicle Tax exempted on motor vehicles deployed to Central Deposit

Yard Premises

Case Name : Tarachand Logistics Solutions Limited Vs State of Andhra Pradesh (Andhra Pradesh High Court)

Appeal Number : Writ Petition No. 38285 of 2022

Date of Judgement/Order : 13/06/2023

Courts : All High Courts (10848) Andhra Pradesh HC (177)

Tarachand Logistics Solutions Limited Vs State of Andhra Pradesh (Andhra Pradesh High Court)

Andhra Pradesh High Court held that motor vehicles deployed to Central Deposit Yard Premises are not subject to Motor Vehicle Tax and are entitled to get exemption as contemplated in Motor Vehicles Act.

Facts- The petitioner is a company registered under Companies Act 1956, engaged in the business of providing logistics support since 1985 and is diversified into deployment of heavy lifting equipment required for infrastructure and construction projects. The petitioner company was awarded with the Contract dated 17.11.2020 for a period of 4.5 years for Handling and storage of Iron and Steel Material at Central Dispatch Yard situated inside of Visakhapatnam Steel Plant, Andhra Pradesh, a corporate entity of Rashtriya Ispat Nigam Limited (RINL). Accordingly, the petitioner company deployed 36 vehicles. Prior to the aforesaid contract, the petitioner has paid the Motor Vehicle Tax in respect of the above referred vehicles to the concerned authorities and attained Fitness Certificate, Insurance Certificate and Pollution Under Control Certificate in accordance with the statutory provisions.

Upon allotment of the contract, the motor vehicles in batches were deployed to Central Deposit Yard premises and with effect from 01-04-2021 all the motor vehicles stopped plying upon the public roads and were thereafter used exclusively for the purpose of the contract and were to only ply inside the Central Deposit Yard premises and not leave the compound at any period of time till the end of contract for any other use. Therefore, these vehicles were not used or kept for use on any of the roads maintained by the State of Andhra Pradesh. The Central Deposit Yard was enclosed by compound walls and ingress and egress is regulated through the gates managed by the Central Industrial Security Force (CISF).

Conclusion-Held that the subject motor vehicles were deployed to Central Deposit Yard Premises and with effect from 01.04.2021, all the motor vehicles have stopped plying upon the public roads and were being used exclusively for the purpose of contract of the petitioner and were only plying inside the Central Deposit Yard but did not leave the compound of the Yard at any period of time. In such a case, the subject vehicles are not liable to be taxed and such vehicles are entitled to get exemption as contemplated in the Act.

12. AP HC grants stay in VAT proceedings as notice was without Jurisdiction

Case Name : Kalpataru Project International Ltd Vs Union of India (Andhra Pradesh High Court)

Appeal Number : W.P. No. 15073 of 2023

Date of Judgement/Order : 27/06/2023

Courts : All High Courts (10848) Andhra Pradesh HC (177)

Kalpataru Project International Ltd Vs Union of India (Andhra Pradesh High Court) This article discusses the case of Kalpataru Project International Ltd Vs Union of India in the Andhra Pradesh High Court. The proceedings are being questioned on the grounds of jurisdiction, as the notice proposing revision of a VAT refund was issued by a Deputy Commissioner instead of a Joint Commissioner. The petitioner, engaged in the erection and installation of towers, was assessed to VAT and a refund was initially sanctioned in 2019. However, no refund was provided, and instead, a revision notice was issued proposing a demand of over Rs. 28 crores. The petitioner challenged this revision notice in a writ petition, raising several contentions. They argued that the power of revision is limited and cannot exceed the scope of the original proceedings. They also claimed that the revision notice was an attempt to delay the refund process. Furthermore, it was pointed out that the present notice was issued by the Deputy Commissioner, whereas the original assessment was conducted by a Joint Commissioner.

The Andhra Pradesh High Court took note of the petitioner's concerns and observed that the authorities had shown haste in adjudicating the revision notice. Additionally, the court acknowledged that the matter was already posted before them, and despite this, the 4th respondent issued a personal hearing notice to the petitioner. Considering these circumstances and the absence of a counter filed by the learned Government Pleader, the court ordered a stay of further proceedings before the 4th respondent until further orders.

The matter was argued by Ld. Counsel Bharat Raichandani

13. Karnataka HC Directs Fresh Consideration of ITC Refund Claim Rejection

Case Name : Hutti Gold Mines Company Ltd. Vs Union of India (Karnataka High Court)

Appeal Number : Writ Petition No. 102277 of 2023 (T-RES)

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10848) Karnataka High Court (568)

Hutti Gold Mines Company Ltd. Vs Union of India (Karnataka High Court)

Introduction: In a recent judgment by the Karnataka High Court concerning Hutti Gold Mines Company Ltd. Vs Union of India, the Court discussed the extended limitation period for Input Tax Credit (ITC) refund claims. The petitioner sought to quash a previous order rejecting their request for an ITC refund, citing the ground of limitation.

Analysis: The ITC refund claim by the petitioner for the month of November 2018 was previously denied by the Assistant Commissioner due to time limitations. Upon appealing to the third respondent appellate authority, the appeal was rejected, prompting the petitioner to approach the High Court. The petitioner's counsel contended that this issue is well addressed in various orders from the Supreme Court and the same High Court, referencing the case of M/s.Mangalore Refinery and Petrochemicals Ltd., vs. Union of India. Although the respondent's counsel acknowledged the petitioner's claim, he argued that the initial rejection happened before a specific notification was issued on 15.07.2022, hence no error could be found. However, the Court emphasized that it had previously adjudicated the question at hand in the referenced writ petition, necessitating the resolution of the current petition in the same vein.

Conclusion: Following its analysis, the Karnataka High Court decided to set aside the previous order rejecting the refund claim and directed the Assistant Commissioner to reassess the application in accordance with the law.

14. Direction to State & Govt Agencies given to calculate tax difference in works contract post-GST

Case Name : B S Kumar Swamy Vs State of Karnataka (Karnataka High Court)

Appeal Number : Writ Petition No. 2130 of 2022 (T-RES)

Date of Judgement/Order : 08/06/2023

Courts : All High Courts (10848) Karnataka High Court (568)

B S Kumar Swamy Vs State of Karnataka (Karnataka High Court)

Karnataka High Court directed the State and Government Agencies to calculate 'tax difference' on balance works executed or to be executed after 01.07.2017. In nut-shell, court directed to determine the pre-GST and post-GST tax difference in case of works contract.

Facts- This writ petition is filed under Article 226 of the Constitution of India, praying to declare that the provisions of the GST Act is inapplicable in respect of works contract where provisions of service are made before 01.07.2017 in so far as petitioners are concerned and consequently that the respondents have no jurisdiction to either issue notice or to take any coercive steps against the petitioners under the provisions of the GST Act dated 01.07.2017.

Conclusion- Direction given to the State and Government Agencies to calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners. The payments received by the Petitioners pre-GST for such works executed before 01.07.2017 are to be assessed under the KVAT tax regime – either under COT or VAT scheme as applicable. Calculate the balance works to be completed or completed after 01.07.2017, in the original contract. Thereafter, derive the rate of materials, and KVAT items required or used to complete the balance works. Accordingly, directed to calculate "tax difference" on such balance works executed or to be executed after 01.07.2017 separately. A supplementary agreement may be signed with the Petitioners for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid

/reimbursed, as the case may be, the differential tax amount by the concerned employer ; so also, in case payments for works completed pre-GST are made post-GST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.

15. Calcutta HC Directs Release of Tea Consignment: No Supplier Involvement in Smuggled Poppy Seeds

Case Name : Radha Tea Merchant Vs Senior Joint Commissioner (Calcutta High Court)

Appeal Number : WPA No. 731 of 2023

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10848) Calcutta High Court (626)

Radha Tea Merchant Vs Senior Joint Commissioner (Calcutta High Court)

Introduction: In a recent ruling, the Calcutta High Court ordered the release of three tea consignments belonging to Radha Tea Merchant. The consignments had been detained due to a smuggling case involving poppy seeds. The court concluded that there was no evidence connecting the supplier of tea to the smuggled goods, thus directing the release of the consignments.

Analysis: In the case of Radha Tea Merchant Vs Senior Joint Commissioner, the petitioner sought the release of three tea consignments detained by the respondent authorities. During the investigation, it was discovered that poppy seeds, under the guise of Ramdana seeds, had been smuggled in the same vehicle that was transporting the tea consignments. However, the court observed that there was no involvement of the tea supplier with the smuggled poppy seeds. Importantly, the Directorate of Revenue Intelligence indicated that they had no objection to the release of the tea consignment, given that the tea is perishable.

Conclusion: This judgement reaffirms the principle of fairness and the importance of evidence-based rulings. Despite the illegal smuggling of poppy seeds on the same vehicle, the court recognized the distinct nature of the tea consignment and the absence of evidence linking it to the smuggling operation. Hence, the Calcutta High Court ruling in the Radha Tea

Merchant Vs Senior Joint Commissioner case sets a precedent that investigations need to clearly establish involvement before implicating a party in illicit activities.

16.HC Condones 2-Day Delay in Manual GST Appeal Filing after Online Submission

Case Name : Isha Scraps Vs Superintendent (Madras High Court)

Appeal Number : W.P.No.17825 of 2023

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10848) Madras High Court (1223)

Isha Scraps Vs Superintendent (Madras High Court)

In the recent case of Isha Scraps Vs Superintendent, the Madras High Court provided a significant ruling. The court agreed to condone a delay of two days in the manual filing of an appeal after it had been submitted online on the GST Portal, underlining the flexibility and understanding within the Indian judiciary when valid reasons are provided.

Analysis: The petitioner, Isha Scraps, sought the court's permission to file a statutory appeal after the cancellation of their registration under the Tamil Nadu Central Goods and Services Tax Act, 2017. The appeal was delayed by two days, which the petitioner attributed to a lack of understanding of the procedural technicalities and an absence of communication about the order uploaded on the GST portal. The court, after reviewing the case, considered the delay of two days reasonable given the circumstances, and therefore, decided to condone it. Despite the appeal being filed online, a manual copy was required within seven days of e-filing, a stipulation that the petitioner had missed by two days. Senior Panel Counsel for the respondents, Mr. Rajnish Pathiyil, did not object to the court's decision, acknowledging the validity of the petitioner's explanation and the minimal delay. The court allowed the petitioner to re-present the appeal papers within a week, with the assurance that it would be accepted without reference to limitation but with all other statutory conditions, including pre-deposit, being complied with.

Conclusion: The judgment by the Madras High Court in the case of Isha Scraps Vs Superintendent exemplifies an instance where the court showed leniency for minor delays,

especially when sufficient justification was provided. This ruling may set a precedent for future cases involving minor procedural delays in the context of GST compliance and appeals.

17. In absence of SCN & adjudication order, recovery proceedings quashed by HC

Case Name : Shree Ram Agrotech Vs State of Jharkhand (Jharkhand High Court)

Appeal Number : Order No. W.P. (T) No. 163 of 2023

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10848) Jharkhand High Court (109)

Shree Ram Agrotech Vs State of Jharkhand (Jharkhand High Court)

Hon'ble Jharkhand High Court ('HC') in the case of M/s Shree Ram Agrotech "the petitioner" has set aside the demand order & consequent recovery proceedings in view of non-compliance with provisions regarding issuance of Show-Cause Notice and adjudication order as prescribed under GST law. Captioned ruling has been analyzed in this update.

A. ISSUE INVOLVED

- Whether the recovery notice issued based on summary order in DRC-07 demanding tax, interest, and penalty without following due procedure prescribed under GST law including issuance of Show-cause Notice and passing adjudication order is legally valid?

B. FACTS OF THE CASE

- The petitioner is primarily engaged in the business of trading of ferrous waste and scrap, iron, steel, ingots and other metal articles and is registered under GST.
- The petitioner directly received a recovery notice from the department without getting DRC-01, ShowCause Notice (SCN) and adjudication order and aforesaid documents were not provided even after specific request by him.
- The petitioner approached Appellate Authority however the appeal was dismissed on technical grounds without considering the merits of the case.

C. CONTENTION OF THE APPLICANT

- That Rule 142 of the JGST Rules requires that along with DRC-01, a detailed Show Cause Notice, as per Section 73 (1), shall also be served to the Assessee prior to imposition of any tax, interest, or penalty. That as per Section 73 (9) of the JGST Act, 2017 a detailed adjudication order is to be passed and served to the assessee for imposing any tax, interest, or penalty.
- That the department was requested to provide a copy of the show cause notice, but it was not provided since it was not available with the department itself.

D. CONTENTION OF THE DEPARTMENT

- That they have issued and served Form GST DRC-01 dated 20.12.2018, which is a summary of show cause notice to the Petitioner.
- That since the Appellate Authority, vide Impugned Appellate Order, has already dismissed the appeal of the Petitioner, therefore no interference with the Summary Order in Form GST DRC – 07 is required.

E. RELEVANT LEGAL PROVISIONS REFERRED

Section 73(1) of CGST/JGST Act, 2017

Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Section 73(9) of CGST/JGST Act, 2017

The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

Rule 142 of CGST/JGST Rules, 2017-Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(1A) The proper officer may, before service of Notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

F. OBSERVATION AND DECISION BY HC

Observations of HC

- That no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 has been served by the Respondents upon the Petitioner towards imposition of the tax, interest and penalty under the JGST Act amounting to Rs. 8,04,134/- for the concerned period.
- That no detailed adjudication order, as required under Section 73 (9) of the JGST Act, 2017, has been passed by the Respondents.
- That the Appellate authority has not considered any of the grounds taken by the petitioner herein and dismissed the appeal without deciding it on merit, though the grounds were on record. The Appellate authority should have decided the case on merit and should have given its finding on the grounds of appeal.

Decision of Hon'ble HC

? In view of the above, the impugned orders are set aside.

? However, the Respondent department would be at liberty to issue fresh show cause notice to the Petitioner, if so advised, and proceed in the matter strictly following the provisions of JGST Act and its Rules.

G. Our comments

In the captioned decision, Hon'ble Jharkhand High Court has come down heavily on the department for not following the due process of law as well as on Appellate Authority for not deciding the appeal on merits. Hon'ble HC has followed its judgement in Nkas Services Pvt Ltd wherein the show-cause notice was quashed for not being proper and thus violative of principles of natural justice. Through this ruling, the cardinal principle has again been reiterated that where a power is given to do a certain thing in a certain way, that thing must be done in that way only. In absence of following due process of law, the entire proceedings would become void irrespective of the merits of the case.

18. Retrospective supplier GST registration cancellation: HC grants Interim Relief

Case Name : Sri Balaji Metals And Minerals Private Ltd. Versus Union of India (Chhattisgarh High Court)

Appeal Number : WPT No. 170 of 2023

Date of Judgement/Order : 23.06.2023

Courts : All High Courts (10848) Chhattisgarh High Court (232)

Sri Balaji Metals And Minerals Private Ltd. Versus Union of India (Chhattisgarh High Court)

In a significant decision by the Chhattisgarh High Court, Sri Balaji Metals And Minerals Pvt. Ltd. received interim relief in a GST case against the Union of India. The company had been facing investigation from both the Central Goods and Services Tax (C.G.S.T.) and the Directorate General of Goods and Services Tax Intelligence (D.G.G.I.) after their service provider's registration was cancelled. The contention of Sri Balaji Metals was that the dual action taken against them was illegal, and the denial of credit based on the supplier being a

non-existent entity was incorrect. They also argued that there were no grounds for 'roving enquiries' in place of a statutory audit under Section 65 of the GST Act. The court, taking a prima facie view, directed that no further orders would be passed until the next date of hearing, acknowledging that the tax paid was shown on the GST portal of the petitioner.

Conclusion: This decision by the Chhattisgarh High Court comes as a significant relief to Sri Balaji Metals And Minerals Pvt. Ltd. and potentially sets a precedent for similar cases. The final outcome of this case could influence how such disputes are handled in the future, particularly in cases where the registration of a supplier is retrospectively cancelled. It also highlights the importance of the digital GST portal in verifying the payment and credit of taxes. The next hearing, scheduled for the week of July 24, 2023, will be keenly anticipated.

The matter was argued by Ld. Counsel Bharat Raichandani

19. Unsustainable Order: Cancelling GST Registration due to Vague Notice

Case Name : Sona Metals Vs State of Gujarat (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 25221 of 2022

Date of Judgement/Order : 15/06/2023

Courts : All High Courts Gujarat High Court

Sona Metals Vs State of Gujarat (Gujarat High Court) Order cancelling GST registration based on very vague and cryptic notice is unsustainable Gujarat High Court declares the order canceling GST registration as unsustainable in law and sets it aside. The court emphasizes that the cancellation was based on a vague and cryptic show cause notice, which prevented the petitioner from providing a proper response. The court refers to a previous case and concludes that such notices are not valid grounds for cancellation.

Facts- The petitioner is registered under the Gujarat Goods & Services Tax Act, 2017. The petitioner received show cause notice in Form GST REG-17/31 simply stating that in case, the Registration has been obtained by means of fraud, wilful misstatement or suppression of fact. Further, order cancelling the registration in Form GST REG-19 was passed which stated that the registration of the petitioner was being cancelled pursuant to the show cause notice dated

30.06.2022, but in fact, the petitioner did not receive any such notice dated 30.06.2022 as stated in the impugned order. The petitioner, therefore, has preferred the present petition. Conclusion- This Court has considered such type of show cause notice, which was issued for cancellation of registration and this Court, after considering the decision rendered in case of Aggrawal Dyeing, has allowed the writ petition. In the present case also, as observed hereinabove, the show cause notice dated 01.07.2022 issued by the respondent to the petitioner is very vague and cryptic. Therefore, it was difficult for the petitioner to give any reply to the said show cause notice.

20. Statutory GST Appeal Allowed by HC despite elapse of time for filing

Case Name : Cauvery Extrusions Private Limited Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : WP No. 16600 of 2023

Date of Judgement/Order : 06/06/2023

Courts : All High Courts (10848) Madras High Court (1223)

Cauvery Extrusions Private Limited Vs Assistant Commissioner (ST) (Madras High Court)

The case under review is the appeal of Cauvery Extrusions Private Limited against the Assistant Commissioner (ST) in the Madras High Court. The case was primarily about the petitioner's request to approach the revenue authorities by way of a statutory appeal after the time for filing such an appeal had elapsed. The impugned order was issued on 30.06.2022, meaning the time limit for filing a statutory appeal had passed. However, the petitioner had outlined some reasons for this delay in the accompanying affidavit. Notably, the respondent's representative did not strongly contest the petitioner's request for availment of a statutory appeal. The Madras High Court, while dismissing the challenge to the impugned order, granted the petitioner the liberty to contest it by way of a first appeal. The court ruled that any appeal filed within four weeks from the date of receipt of the court order would be considered by the appellate authority, not on the grounds of limitation, but on ensuring compliance with all other statutory conditions.

21. Calcutta HC Rectifies Single Bench Order Against Section 107(7) of CGST Act

Case Name : Liakhat Ali Mallick Vs State of West Bengal & Ors. (Calcutta High Court)

Appeal Number : M.A.T. No. 823 of 2023

Date of Judgement/Order : 16/06/2023

Courts : All High Courts (10848) Calcutta High Court (626)

Liakhat Ali Mallick Vs State of West Bengal & Ors. (Calcutta High Court)

In the case of Liakhat Ali Mallick vs State of West Bengal & Ors., the Calcutta High Court recently overturned an order from a Single Bench directing the appellant to remit 20% of the disputed tax, which was against Section 107(7) of the CGST Act. The appellant had contested the garnishee notice issued, citing that they had already paid the demanded tax in full and had filed an appeal before the appellate authority.

The Single Bench had initially allowed for a stay on the garnishee notice but asked the appellant to deposit 20% of the interest liability. However, the Double Bench found this decision in contravention of Section 107(7) of the CGST Act, which only necessitates the aggrieved assessee to deposit 10% of the disputed tax. Considering that the appellant had already paid the entire tax, the Double Bench ruled that the appellant shouldn't be mandated to pay 20% of the interest.

This ruling reinstates the essence of Section 107(7) of the CGST Act and rectifies the error made by the Single Bench. The Calcutta High Court, through this judgment, has affirmed the importance of statutory compliance and ensured the appeal made by the appellant is considered on its merits. The case sets an important precedent, highlighting the importance of aligning with statutory requirements in judicial decision-making.

22. Gujarat HC Dismisses misconceived WP under Section 73(9) r.w.s 78 & 107 of GST Act

Case Name : Stallion Energy Private Limited Vs Union Of India (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 6587 of 2023

Date of Judgement/Order : 15/06/2023

All High Courts (10848) Gujarat High Court (1030)

Stallion Energy Private Limited Vs Union Of India (Gujarat High Court) In a significant ruling, the Gujarat High Court dismissed a writ petition (WP) filed by Stallion Energy Private Limited against Union of India, citing sections 73(9) read with sections 78 and 107 of the Gujarat Goods and Services Tax Act, 2017 as misconceived. The petitioner was seeking to quash the provisions of attachment proceedings under Section 83 of the Act and demanded a refund of amounts withdrawn from their bank account by the respondents.

This case reveals complexities involved in tax litigation. The petitioner contended that while the respondents had withdrawn Rs. 46 lakh from their account, the pre-deposit for their appeal was only 10% of the assessed tax amount. Thus, they demanded a refund of the excess amount. However, the court found their contention misconceived in light of sections 73(9), 78, and 107 of the Act. It suggested that if the petitioner's appeal was successful, they could request a refund from the Appellate Authority. However, at the current stage, the court deemed the petition inappropriate and dismissed it. This judgement emphasises the court's stringent adherence to the stipulated tax laws and procedures, and the limitations on claiming refunds without due process.

23. Karnataka HC dismisses Petition to declare Section 16(4) of CGST/SGST Act as Unconstitutional

Case Name : Prabhayya Basayya Dandavatimath Vs Commissioner of Central Goods And Service Tax And Central Excise (Karnataka High Court)

Appeal Number : Writ Petition no. 103531 of 2023 (T-RES)

Date of Judgement/Order : 07/06/2023

Courts : All High Courts (10848) Karnataka High Court (568)

Prabhayya Basayya Dandavatimath Vs Commissioner of Central Goods And Service Tax And Central Excise (Karnataka High Court) In a recent judgment, the Karnataka High Court dismissed a writ petition that sought a declaration of Section 16(4) of the Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) Act 2017 as being ultra vires the Constitution. The petitioner was, however, granted the liberty to challenge the order of the respondent in separate proceedings.

This case centered on a request for a constitutional review of Section 16(4) of the CGST/SGST Act 2017. The petitioner sought a declaration that the said section was ultra vires, i.e., beyond the powers of the Constitution. However, the petitioner's counsel, during the hearing, requested the court to dismiss the writ petition without pressing it further. The court complied with the request, granting the petitioner the liberty to challenge the respondent's order in separate proceedings.

The court left all contentions open, indicating that the question about the constitutionality of Section 16(4) of the CGST/SGST Act 2017 could be raised in future litigation.

24. Calcutta HC Orders Release of Detained Tea Consignment Amid Investigation of Bogus E-Way Bill

Case Name : Jodhraj Mohanlal Vs Senior Joint Commissioner (Calcutta High Court)

Appeal Number : WPA 580 of 2023

Date of Judgement/Order : 15/06/2023

Courts : All High Courts (10848) Calcutta High Court (626)

Jodhraj Mohanlal Vs Senior Joint Commissioner (Calcutta High Court)

Introduction: The Calcutta High Court recently resolved a writ application by directing the release of a tea consignment worth Rs. 74,586 that had been detained by authorities due to a dispute regarding a suspected bogus E-Way bill. The consignment was caught in a mix-up involving smuggled poppy seeds mislabeled as Ramdana seeds.

Analysis: The petitioner had booked a consignment of 20 kg Soongachi tea to be delivered from Bajaj Parivahan Pvt. Ltd. to the Sikkim Tea Agency in Delhi. Unfortunately, the vehicle carrying the consignment, along with goods from other consignors, was detained due to a smuggling suspicion tied to another consignment of poppy seeds mislabeled as Ramdana seeds. The authorities had not found any link between the petitioner and the smuggled poppy seeds, and the petitioner was granted permission to have the tea consignment released given its perishable nature. The court acknowledged the complexity of the case, given the simultaneous transportation of multiple consignments and the detection of a smuggling operation. Nevertheless, it found no reason to delay the release of the petitioner's tea consignment, especially considering the perishable nature of tea. This ruling underlines the court's practical approach and the need for fairness even amidst complex investigations.

Conclusion: The Calcutta High Court's decision provides an insightful precedent on the need to ensure the rights and interests of innocent parties are protected in the midst of smuggling investigations. The decision emphasizes the need for fairness and efficiency, particularly in cases involving perishable goods. However, it also underlines the right and necessity of authorities to continue with their investigations regarding illegal activities.

25. Section 107 of CGST Act impliedly excluded application of Limitation Act

Case Name : Penuel Nexus Pvt Ltd Vs Additional Commissioner Headquarters (Appeals) (Kerala High Court)

Appeal Number : Wp(c) No. 15574 of 2023

Date of Judgement/Order : 13/06/2023

Courts : All High Courts (10848) Kerala High Court (553)

Penuel Nexus Pvt Ltd Vs Additional Commissioner Headquarters (Appeals) (Kerala High Court)

Kerala High Court held that provisions of section 107 of the Central Goods and Services Tax Act impliedly excluded the application of the Limitation Act. Accordingly, the Limitation Act will apply only if it is extended to the special statute.

Facts-The petitioner is a firm engaged in direct marketing. The petitioner had a GST registration. Due to the Covid-19 pandemic, the petitioner's business got affected and was prevented from filing the returns on time. The respondents, cancelled the GST registration. Even though the petitioner preferred an appeal before the Additional Commissioner (Appeals), the appeal was rejected on the ground of delay. Hence, the writ petition.

Conclusion- The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted. On an appreciation of the language of Section 107(4) and the above analysed factual and legal background, this Court is of the view that there is no illegality in the action of the 1 st respondent in rejecting the appeal as time-barred.

26. RVAT: VAT payable on entire consideration charged for food by Chokhi Dhani

Resorts

Case Name : Commercial Taxes Officer Vs Chokhi Dhani Resorts Pvt Ltd (Rajasthan High Court)

Appeal Number : S.B. Sales Tax Revision / Reference No. 63/2020

Date of Judgement/Order : 02/06/2023

Courts : All High Courts (10848) Rajasthan High Court (315)

Commercial Taxes Officer Vs Chokhi Dhani Resorts Pvt Ltd (Rajasthan High Court)

Rajasthan High Court held that assessee cannot split up the amount charged for the sale of food and certain services in addition to the food. Hence, VAT is payable on the entire consideration charged for the food.

Facts- A survey was conducted of the premises of the assessee on 14.07.2010 wherein it was discovered that the assessee, which is engaged in the business of restaurants and resorts, was issuing 'entry coupon' at the entry gate of the premises to its customers and charging Rs. 350/- per adult and Rs. 175 per minor. The said charge, as per the entry coupon, is only adjustable against food. However, the assessee was only paying VAT on Rs. 250 (in case of adults) or Rs. 125 (in case of children) and the remaining amount, i.e. Rs. 100 (in case of adults) and Rs. 50 (in case of children) was reflected separately in the assessee's books of accounts under the head 'Charges for generation of Cultural Receipts, Staff, Maintenance, Adm. Expenses' and no VAT was being paid on the same, which amounts to evasion of tax. Accordingly, the Assessment Order dated 25.02.2011 was passed and tax along with interest and penalty was imposed upon the assessee. Upon appeal, the Deputy Commissioner (Appeal), vide order dated 23.03.2012, maintained the levy of tax and interest but deleted penalty imposed u/s. 61 of RVAT Act. Thereafter, the Tax Board allowed the appeal filed by the assessee and set aside the levy of tax and interest also.

Conclusion- On a conjoint reading of the two definitions i.e. section 2(35) 'sale' and section 2(36) 'sale price', it is abundantly clear that the assessee cannot split up the amount charged for the sale of food, even if assessee provides certain services in addition to the food, and VAT

has to be paid on the entire consideration charged for the food. The assessee, undisputedly, issued coupons that were adjustable against food only and therefore the assessee is liable to pay VAT on the entire consideration charged from its customers for supply of food.

27. Madras HC Quashes Notice cum order passed without hearing under TNVAT

Case Name : BRT Spinners Private Limited Vs ACIT (Madras High Court)

Appeal Number : W.P. No. 17413 & 17414 of 2023

Date of Judgement/Order : 13/06/2023

Courts : All High Courts Madras High Court

BRT Spinners Private Limited Vs ACIT (Madras High Court)

In the case of BRT Spinners Private Limited Vs ACIT, the Madras High Court has invalidated a notice that required the petitioner to discharge a tax liability without conducting a hearing on the rectification petition filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. It was observed that notice is in fact an order passed by the assessing officer disposing the additional rectification petition. The petitioner challenged the 'notice' issued by the assessing officer as an order disposing of their additional rectification petition without providing them an opportunity to be heard. The Madras High Court upheld this challenge, ruling that the authority should have issued a proper notice to the petitioner, conducted a hearing, and then made a decision on the request for rectification. Though no counter has been filed, the learned Additional Government Pleader, representing the Commercial Taxes Department, fairly acknowledged this procedural lapse. Consequently, the impugned notice was set aside by the High Court. The notice had demanded the discharge of a tax liability amounting to Rs. 27,739 and Rs. 65,215 in two separate cases as a precondition to considering the rectification petition related to liability for sizing contracts. The Court directed that the petitioner should be allowed to appear before the authority for a hearing on both the rectification petition and the additional rectification petition. It further ordered that a decision should be made within six weeks from the date of the personal hearing, in accordance with law.

28. Tax Dispute: HC grants stay subject to furnishing of personal bond, Stayed condition of furnishing a bank guarantee

Case Name : Burnt Umber Fashion Pvt. Ltd Vs Deputy Commissioner (CT) (Appeal) Chennai (Madras High Court)

Appeal Number : W.P. No. 17558 of 2023

Date of Judgement/Order : 14/06/2023

Courts : All High Courts (10848) Madras High Court (1223)

Burnt Umber Fashion Pvt. Ltd Vs Deputy Commissioner (CT) (Appeal)

Chennai (Madras High Court) In Burnt Umber Fashion Pvt. Ltd Vs Deputy Commissioner (CT) (Appeal) Chennai, the Madras High Court has granted a stay on the condition of furnishing a bank guarantee for the balance of the disputed tax, permitting the petitioner to provide a personal bond instead. The case revolves around the condition imposed by the first respondent requiring the petitioner to furnish a bank guarantee for the balance of the disputed tax of Rs.12,73,884/-. The petitioner had already paid 25% of the disputed tax amounting to Rs.6,37,000/- and was directed to pay an additional sum of Rs.6,36,885/-, which they complied with. However, the petitioner contested the necessity to provide a bank guarantee for the remaining balance of the disputed tax. They requested that this requirement be substituted with a personal bond. The court acknowledged that similar requests had been favorably considered in the past and that personal bonds had been accepted in lieu of bank guarantees. Furthermore, the respondent's representative did not dispute this position, and considering that the petitioner had already remitted 50% of the disputed tax, the court accepted the personal bond for the balance tax.

29. HC Expresses Concern Over Harassment of Advocates due to Service Tax

Notices

Case Name : Pankaj Khare Vs Union of India (Allahabad High Court)

Appeal Number : Writ Tax No. 148 of 2023

Date of Judgement/Order : 07/06/2023

Courts : All CESTAT (2741) Allahabad High Court (564)

Pankaj Khare Vs Union of India (Allahabad High Court) Introduction: In a significant decision, the Allahabad High Court ruled on the case of Pankaj Khare Vs Union of India, addressing the applicability of GST and service tax for practicing advocates. This case explores the rights and privileges of legal professionals in India, specifically concerning taxation law.

Analysis: Pankaj Khare, a practicing advocate, disputed an order issued by the Deputy Commissioner, CGST & Central Excise Division, Lucknow, assessing him with service tax and levying tax and interest amounting to Rs. 332651/-. The petitioner claimed that as a practicing advocate, he was exempt from service tax under a Notification dated 20.06.2012, rendering the order illegal, arbitrary, and without jurisdiction. The court took into account an order whereby the respondents themselves dropped the proceedings against the petitioner. The court further observed that numerous members of the Bar had received similar notices. The court expressed concern over the harassment experienced by practicing advocates due to such notices, even when they are exempted from service tax/GST. The judgment by Allahabad High Court directed the Commissioner, GST to issue clear instructions to the GST Commissionerate in Lucknow to refrain from issuing notices regarding payment of service tax/GST to lawyers providing legal services that fall within the negative list as far as service tax is concerned.

30. Alleged Tax Evasion: Gujarat HC grants Anticipatory Bail to Officer

Case Name : Jitendrakumar Ramjibhai Detroja Vs State of Gujarat (Gujarat High Court)

Appeal Number : R/Criminal Misc.Application No. 8668 of 2023

Date of Judgement/Order : 06/06/2023

Courts : All High Courts (10847) Gujarat High Court (1030)

Jitendrakumar Ramjibhai Detroja Vs State of Gujarat (Gujarat High Court)

Introduction: In the recent case of Jitendrakumar Ramjibhai Detroja Vs State of Gujarat, the Gujarat High Court granted anticipatory bail to a public servant in a case registered under the Prevention of Corruption Act. The primary reason for the court's decision was that custodial interrogation was deemed unnecessary at this stage of proceedings.

Analysis: Jitendrakumar Ramjibhai Detroja, the applicant, sought anticipatory bail in relation to an FIR registered for various offenses under the Prevention of Corruption Act and the IPC. The applicant's counsel argued that the nature of allegations were such that custodial interrogation was not necessary and the applicant would cooperate during the investigation and trial. The Court granted anticipatory bail to the applicant after considering several aspects such as the applicant not being named in the FIR, the delay of seven years in seeking to arrest the applicant, and the lack of material against the applicant apart from one telephonic conversation. The Court also noted that the applicant has cooperated with the investigation, and there was no indication that the applicant would not continue to cooperate. In making its decision, the Court referred to the principles laid down by the Supreme Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab regarding the granting of anticipatory bail.

31. Notice proposing cancellation of GST registration without specifying reasons is cryptic & untenable

Case Name : Sarvoday Impex Vs Union of India (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 903 of 2023

Date of Judgement/Order : 07/06/2023

Courts : All High Courts (10847) Gujarat High Court (1030)

Sarvoday Impex Vs Union of India (Gujarat High Court)

Gujarat High Court held that show cause notice proposing cancellation of GST registration without specifying reasons for cancellation is cryptic and deserved to be quashed.

Facts- The petitioner is registered under Central Goods and Service Tax Act, 2017. A show-cause notice in Form of GST REG-17/31 has been issued by the respondent authorities while exercising power u/s. 29 of the Act read with Rule 22(1) of the Central Goods and Services Tax Rules, 2017. It is alleged that the show-cause notice simply states the reason for issuance of notice (as in case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts). Petitioner accordingly contested that the said show-cause notice is as vague as possible and does not refer to any particular facts much less point out so as to enable the noticee to give its reply. The petitioner hence urges before this Court to quash and set aside the impugned show-cause notice issued by the respondents.

Conclusion- Held that the present petition is allowed. The impugned show-cause notice dated 06.01.2023, being without reasons, is cryptic and deserves to be quashed and set aside, and is hereby quashed and set aside.

32. Rejection of rectification application filed u/s 161 justified due to non-cooperation during assessment

Case Name : Seoyon E-Hwa Summit Automotive India Pvt Ltd Vs Deputy Commissioner (ST) (Madras High Court)

Appeal Number : W.P. No. 16535 & 16538 of 2023

Date of Judgement/Order : 06/06/2023

Courts : All High Courts (10847) Madras High Court (1223)

Seoyon E-Hwa Summit Automotive India Pvt Ltd Vs Deputy Commissioner (ST) (Madras High Court) Madras High Court held that rejection of rectification application filed under section 161 of the Goods and Service Tax Act, 2017 justified as the petitioner has not cooperated in the course of assessment.

Facts- The challenge is to an order of assessment passed under the provisions of the Goods and Services Tax Act, 2017 (in short 'Act') dated 02.2023 and an order dated 18.04.2023 rejecting the rectification application filed under Section 161 of the Act.

Conclusion- Section 161 of the Act, which provides for rectifications only of an error apparent on the face of record. He enumerates the various opportunities granted to the petitioner to supply the break-up of the ITC claimed and the reconciliation and notes non compliance with those directions. He thus rejects the application under Section 161 for the reason that there was no material available on record that was supplied by the assessee that would point to any error. This is too much to expect from the Assessing Officer and it is not for an assessee who has not made even a solitary attempt to cooperate or assist in the assessment proceedings to lay the blame at the doorstep of the revenue. Writ petition dismissed.

33. Apprehensions of Non-Consideration of Reply – HC dismisses Writ

Case Name : Sodhani Sweets Private Limited Vs Joint Commissioner (Rajasthan High Court)

Appeal Number : Civil Writ Petition No. 8680/2023

Date of Judgement/Order : 02/06/2023

Courts : All High Courts (10847) Rajasthan High Court (315)

Sodhani Sweets Private Limited Vs Joint Commissioner (Rajasthan High Court)

Introduction: The Rajasthan High Court recently addressed a case filed by Sodhani Sweets Private Limited against the Joint Commissioner, wherein the petitioner's counsel expressed concerns about their reply not being taken into consideration by the respondent-authority, the GST authorities. After considerable argument, the learned counsel for the petitioner sought to withdraw the writ petition with liberty to file a reply to the Show Cause Notice dated 17.03.2023.

Analysis: In the proceedings, the learned counsel for the petitioner projected an apprehension that the GST authorities would not take into consideration the reply to be filed by the petitioner and would decide without considering their submissions. However, the Rajasthan High Court dismissed this apprehension, stating that such assumptions cannot be made at this stage. The court held that it's necessary and expected that the pleas made by the petitioner in response to the Show Cause Notice would be dutifully considered and dealt with while taking a decision on the matter.

34. Madras HC Allows Delayed Appeal under TN Value Added Tax

Case Name : Aqua Excel Vs Assistant Commissioner (ST)(FAC) (Madras High Court)

Appeal Number : W.P.Nos.14814 of 2023

Date of Judgement/Order : 01/06/2023

Related Assessment Year : Courts : All High Courts (10847) Madras High Court (1223)

Aqua Excel Vs Assistant Commissioner (ST)(FAC) (Madras High Court)

The case of Aqua Excel Vs Assistant Commissioner (ST)(FAC) brought before the Madras High Court concerns the petitioner's plea to be permitted to approach the appellate authority with a statutory appeal, even though the appeal was delayed beyond the condonable period. The Madras High Court took into consideration the reasons for the delay provided in the writ affidavit. Aqua Excel had engaged a local consultant who prepared the appeal papers but failed to file them within the stipulated time, causing the delay. The Court did not find serious objections to the request, understanding the circumstances that led to the delay.

35. Delay of 10 days in filing appeal condoned as order sent to Consultant's email id

Case Name : Mutharamman Traders Vs State Tax officer (Madras High Court)

Appeal Number : W.P. No. 17600 & 17604 of 2023

Date of Judgement/Order : 14/06/2023

Courts : All High Courts (10847) Madras High Court (1223)

Mutharamman Traders Vs State Tax officer (Madras High Court)

Madras High Court condones the delay of 10 days in filing appeal as the petitioner was unaware of the orders as the orders was sent to the Consultant's email id.

Facts- The challenge is to two orders of assessment, both dated 31.10.2022 in respect of assessment years (AY) 2020-21 and 2021-22, passed under the provisions of the Tamil Nadu General Sales Tax Act, 2017. Notably, in the present case, the appeals have, admittedly, been filed within 10 days after the statutory period of 120 days.

Conclusion- Thus, an explanation has been given to the effect that the petitioner was unaware of the orders having been issued as it had been sent to the Consultant's email id and also to the effect that the sole proprietor was unwell at the relevant point in time. Ms. Ranganayaki, learned Additional Government Pleader, who accepts notice for the respondents fairly does not raise any strenuous objection to the suggestion of the Court that, having regard to the explanation tendered, the delay of 10 days may be condoned and the appeals restored to the file of the appellate authority.